IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN DOE, a married person,	)	No. 61905-5-I
	)	
Appellant,	)	DIVISION ONE
	)	
v.	)	
	)	
WASHINGTON STATE BOARD OF ACCOUNTANCY, and RICHARD SWEENEY, its Executive Director,	)	Unpublished Opinion
	)	
Respondents.	)	FILED: June 8, 2009
	)	

Lau, J. — The Washington State Board of Accountancy is investigating allegations that accountant John Doe misappropriated client funds. Doe filed this action for declaratory relief, arguing that he has a mental health disability covered by the Americans with Disabilities Act of 1990 (ADA), 43 U.S.C. § 12101, that the disability caused his misconduct, and that the ADA requires the Board to alter its disciplinary proceedings in various ways. The Board moved to dismiss the suit on the ground that no charges have been filed and therefore the suit is not ripe for adjudication. The trial

court agreed and dismissed the complaint. We affirm.

FACTS

John Doe is a licensed certified public accountant. In May 2007, members of Doe's accounting firm contacted the Washington State Board of Accountancy regarding his alleged misappropriation of over $500,000 in client funds. The Board commenced an investigation, notified Doe of the allegations, and requested a response.

In February 2008, Doe filed the present action against the Board and its executive director. The complaint alleged that Doe suffers from a mental health disorder covered by the ADA and that the disorder caused the alleged misconduct. The complaint further alleged that Doe sought to provide medical records regarding his condition to the Board, but the Board "refuse[d] to protect such information in any way from public disclosure . . . ." The Board allegedly took the position that "the ADA does not influence, govern, apply to, or in any way affect its disciplinary processes, whether prosecutorial, investigatory, or adjudicatory." Doe requested declaratory and other relief requiring the Board to, among other things, apply the ADA during his disciplinary proceedings and refrain from taking action regarding his license until the completion of this action.

The Board moved to dismiss the complaint on ripeness grounds, and the court granted the motion. The court also denied Doe's motion to amend his complaint "to more specifically describe the [Board's] violations of the ADA . . . ." The court's ruling stated, "The matter has already been dismissed on the grounds of ripeness."

Doe moved for reconsideration of the dismissal order, arguing in part that the dismissal should have been without prejudice. The court denied the motion, but noted that its order "is not an adjudication of the merits of the underlying claim." Doe appeals.

DECISION

The principal issue on appeal is whether the trial court erred in ruling that Doe's action was not ripe for judicial resolution.[1] Doe fails to demonstrate error.

The ripeness doctrine exists to prevent courts "'from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" Asarco, Inc. v. Dep't of Ecology, 145 Wn.2d 750, 759, 43 P.3d 471 (2002) (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148–49, 87 S. Ct. 1507, 18 L. Ed. 2d 681 (1967)). In determining ripeness, courts examine the fitness of the issue for judicial determination and the hardship to the parties from withholding such determination; a case is fit for judicial determination if the issues raised are primarily legal, do not require further factual development, and the challenged action is final. First Covenant Church of Seattle v. City of Seattle, 114 Wn.2d 392, 399–400, 787 P.2d 1352 (1990). When, as in this case, the plaintiff seeks a declaratory judgment, there must be a "justiciabile

[1] Ripeness determinations are reviewed de novo. Estate of Friedman v. Pierce County, 112 Wn.2d 68, 75–76, 768 P.2d 462 (1989); Keyes v. Sch. Dist. No. 1, Denver, Colo., 119 F.3d 1437, 1444 (10th Cir.1997).

controversy" before a court will act. First Covenant Church, 114 Wn.2d at 397–98. To be justiciable, a controversy must be

> (1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

First Covenant Church, 114 Wn.2d at 398 (quoting Diversified Indus. Dev. Corp. v. Ripley, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)).

Doe fails to establish ripeness or justiciability.[2] Despite his extensive briefing in this court, Doe nowhere recites or applies the well-settled tests for determining ripeness and justiciability. That omission alone is sufficient to defeat his appeal. Timson v. Pierce County Fire Dist. No. 15, 136 Wn. App. 376, 149 P.3d 427 (2006) (appellate court will not consider claims that are insufficiently argued).

Furthermore, Doe's arguments are unpersuasive. He contends his action is ripe because the Board has denied that the ADA applies to its proceedings. A controversy is generally not ripe, however, until the challenged action is final. First Covenant Church, 114 Wn.2d at 400. Similarly, a dispute is not justiciable if it is merely possible or speculative; there must be an actual, present dispute or the mature seeds of one. Here, the Board is still conducting an investigation and has yet to decide whether it will charge Doe with misconduct. Thus, no final administrative action of any kind has been

[2] The concepts of justiciability and ripeness overlap and are sometimes equated. To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (ripeness is inherent in the requirements for justiciability); Neighbors & Friends of Viretta Park v. Miller, 87 Wn. App. 361, 940 P.2d 286 (1997) (equating justiciability with ripeness).

taken;[3] the dispute at this point is merely possible or speculative.[4] If and when the Board decides to charge Doe with misconduct, any issues regarding the applicability of the ADA, the existence of a disability, its relationship to the alleged misconduct, and the exhaustion of administrative remedies will be ripe.

Doe also contends his action is ripe because the Board has declined to protect his medical records from public disclosure. As a result, he has elected not to provide the records to the Board at this juncture. He contends the Board's refusal "has obstructed the interactive process and undermined [his] federal right to a reasonable accommodation of his disability." Reply Br. of Appellant at 21. But again, it is uncertain whether an interactive process or accommodation will even be necessary in this case since the Board is still investigating and has not decided whether charges should be filed.

In addition, it is undisputed that the Board is governed by the Public Records Act (PRA),[5] chapter 42.56 RCW, and that nothing in the PRA or Title 2 of the ADA requires public agencies to maintain the confidentiality of medical records. The PRA does

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[3] See Ass'n of Am. Med. Colleges. v. United States, 217 F.3d 770, 780–81 (9th Cir. 1996) (agency investigation, even when conducted with an eye to enforcement, is not a final action).

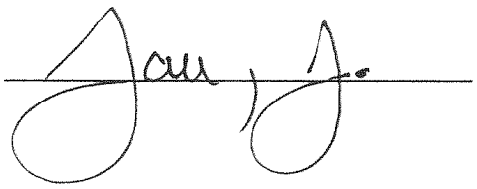
[4] Barnard v. Utah State Bar, 857 P.2d 917, 919 (Utah 1993) (action against bar association was not ripe where "Bar had barely begun a preliminary investigation into the matter" and, though it was "entirely possible that the matter might have matured into a full-blown controversy at a later time, no actual conflict existed when [the plaintiff] commenced his lawsuit.").

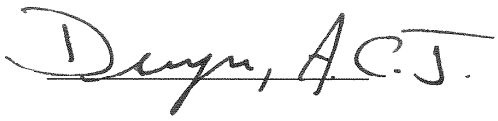
[5] The PRA provides open access to governmental activities and requires agencies to disclose any public record upon request, subject to very specific exceptions that are not applicable here. RCW 42.56.070(1); Amren v. City of Kalama, 131 Wn.2d 25, 31, 929 P.2d 389 (1997).

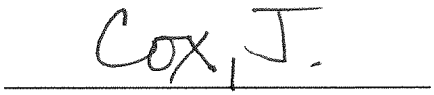
permit, however, a person named in a public record to enjoin its release if a court finds that disclosure "would clearly not be in the public interest and would substantially and irreparably damage any person . . . ." RCW 42.56.540; Spokane Police Guild v. Wash. State Liquor Control Bd., 112 Wn.2d 30, 34–35, 769 P.2d 283 (1989). Thus, Doe has a potential remedy if he submits his medical records and the Board receives a request for their disclosure.[6]

For the reasons set forth above, we conclude the superior court did not err in dismissing Doe's complaint. Doe's claims that the court abused its discretion in denying his motions to amend the complaint and the order of dismissal are meritless. The amended complaint contained nothing affecting the ripeness determination and was thus irrelevant. And Doe's proposed amendment making the dismissal "without prejudice" was unnecessary since a dismissal on ripeness grounds is necessarily a dismissal without prejudice.

Affirmed.







[6] We note that Doe's prayer for relief does not include a request for an order requiring the Board to protect his medical records from disclosure.